

### **13-11-20 Class actions.**

- (1) An action may be maintained as a class action under this act only if:
  - (a) the class is so numerous that joinder of all members is impracticable;
  - (b) there are questions of law or fact common to the class;
  - (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
  - (d) the representative parties will fairly and adequately protect the interests of the class; and
  - (e) either:
    - (i) the prosecution of separate actions by or against individual members of the class would create a risk of:
      - (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
      - (B) adjudications with respect to individual members of the class that would as a practical matter dispose of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
    - (ii) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
    - (iii) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.
- (2) The matters pertinent to the findings under Subsection (1)(e)(iii) include:
  - (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
  - (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
  - (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
  - (d) the difficulties likely to be encountered in the management of a class action.
- (3) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and it may be amended before decision on the merits.
- (4) In a class action maintained under Subsection (1)(e) the court may direct to the members of the class the best notice practicable under the circumstances, including individual notice to each member who can be identified through reasonable effort. The notice shall advise each member that:
  - (a) the court will exclude him from the class, unless he requests inclusion, by a specified date;
  - (b) the judgment, whether favorable or not, will include all members who request inclusion; and
  - (c) a member who requests inclusion may, if he desires, enter an appearance through his counsel.
- (5) When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class.
- (6) In the conduct of a class action the court may make appropriate orders:
  - (a) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;
  - (b) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in the manner the court directs to some or all of the

members or to the enforcing authority of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

- (c) imposing conditions on the representative parties or on intervenors;
  - (d) requiring that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly; or
  - (e) dealing with similar procedural matters.
- (7) A class action may not be dismissed or compromised without approval of the court. Notice of the proposed dismissal or compromise shall be given to all members of the class as the court directs.
- (8) The judgment in an action maintained as a class action under Subsection (1)(e)(i) or (ii), whether or not favorable to the class, shall describe those whom the court finds to be members of the class. The judgment in a class action under Subsection (1)(e)(iii), whether or not favorable to the class, shall specify or describe those to whom the notice provided in Subsection (4) was directed, and who have requested inclusion, and whom the court finds to be members of the class.

Amended by Chapter 378, 2010 General Session